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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,970	09/12/2003	Farooq Ullah Khan	2100.020700	6365
46290 7590 06/15/2007 WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			EXAMINER AJAYI, JOEL	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 06/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/660,970		KHAN, FAROOQ ULLAH	
	Examiner		Art Unit	
	Joel Ajayi		2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cho et al. (U.S. Patent Application Number: 2003/0063587)** in view of **Malladi et al. (U.S. Patent Application Number: 2003/0210668)**.

Consider **claim 1**; Cho discloses a method of wireless communication (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9) comprising: transmitting at least one frame associated with a second frame (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9) using at least a first and a second wireless resource (coding of a channel, MCS, in WCDMA) if an acknowledgement message associated with a first frame is received (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9), and using at least a second wireless resource (lowering the modulation and coding scheme level, MCS) if a non-acknowledgement message associated with the first frame is received (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9).

Except:

Sub-frame.

In the same field of endeavor Malladi discloses a sub-frame (paragraph 36, lines 7-15; paragraph 52, lines 1-18; paragraph 75, lines 1-13).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Malladi into the method of Cho in order to provide an efficient and effective means of transmitting data in a wireless communication system.

Consider **claim 14**; Cho discloses a method of wireless communication (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9) comprising: receiving one frame associated with a second frame (paragraph 4, lines 1-11;

Art Unit: 2617

paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9) using at least a first and a second wireless resource (coding of a channel, MCS, in WCDMA) if an acknowledgement message associated with a first frame is transmitted (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9), and using at least the second wireless resource (lowering the modulation and coding scheme level, MCS) if a non-acknowledgement message associated with the first frame is transmitted (paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9).

Except:

Plurality of sub-frames.

In the same field of endeavor Malladi discloses a plurality of sub-frames (paragraph 36, lines 7-15; paragraph 52, lines 1-18; paragraph 75, lines 1-13).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Malladi into the method of Cho in order to provide an efficient and effective means of transmitting data in a wireless communication system.

Consider **claims 2-13, 15-24**; the combination above discloses that the first and second least wireless resources comprise at least one of a channelization code, a channelization tone and an allocate transmit power level (Cho, paragraph 4, lines 1-11; paragraph 9, lines 1-7; paragraph 16, lines 1-19; paragraph 45, line 21 – paragraph 46, line 9; Malladi, paragraph 4, lines 1-3; paragraph 22, lines 3-13; paragraph 36, lines 7-15; paragraph 52, lines 1-18; paragraph 75, lines 1-13).

Conclusion

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joel Ajayi whose telephone number is (571) 270-1091. The Examiner can normally be reached on Monday-Friday from 7:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Nick Corsaro can be reached on (571) 272-7876. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Art Unit: 2617

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

Joel Ajayi

June 01, 2007


NICK CORSARO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600